

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6568 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

HIRABHAI SHANABHAI PATEL

Versus

COMPETENT AUTHORITY AND ADDL.COLLECTOR

Appearance:

Smt. K.A.Mehta, Advocate, for the Petitioner.

Shri T.H.Sompura, Assistant Government Pleader, for the respondent.

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 18/09/96

ORAL JUDGEMENT

The order passed by the Competent Authority at Ahmedabad (respondent No.1 herein) on 31st July 1993 as

affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No.3 herein) on 29th June 1996 as also the order passed by and on behalf of the State Government (respondent No.2 herein) on 7th February 1995 is under challenge in this petition under Articles 226 and 227 of the Constitution of India. By his impugned order, respondent No.1 declared the holding of the petitioner to be in excess of the ceiling limit by 37019 square metres. By its impugned order, respondent No.2 declared excess an additional area to the tune of 11071.75 square metres. By its impugned appellate order, respondent No.3 dismissed the petitioner's appeal on the ground that the aforesaid impugned order passed by respondent No.1 was reviewed by respondent No.3.

2. This petition has a chequered history. The petitioner filed his declaration in the prescribed form under Section 6 (1) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) with respect to his holding within the urban agglomeration of Ahmedabad. Its copy is at Annexure-A to this petition. It included several parcels of land enjoying exemption under Section 20 (1) of the Act. That form was duly processed by respondent No.1. After observing necessary formalities under Section 8 of the Act, by his order passed under sub-section (4) thereof on 1st October 1984 and communicated on 8th October 1994, respondent No.1 came to the conclusion that the petitioner's holding was not in excess of the ceiling limit. Its copy is at Annexure-C to this petition. It is the case of the petitioner that the order at Annexure-C to this petition was taken in review by respondent No.2 under Section 34 of the Act and it was maintained. It appears that the petitioner thereafter applied for cancellation of exemption qua four parcels of land. Its copy is at Annexure-D to this petition. Thereupon, by the order passed by and on behalf of respondent No.2 on 24th July 1987, exemption qua those four parcels of land came to be cancelled. Its copy is also at Annexure-D to this petition. Thereupon, the petitioner's case was reopened in its entirety. After observing necessary formalities under Section 8 of the Act, by his order passed on 28th February 1989 under sub-section (4) thereof, respondent No.1 declared the holding of the petitioner to be in excess of the ceiling limit by 2107.2 square metres. Its copy is at Annexure-E to this petition. The matter was carried in appeal before respondent No.3. In appeal, the order at Annexure-E to this petition came to be set aside and the matter was remanded to respondent No.1. A copy of the appellate order is at Annexure-F to this petition. After remand, respondent No.1 passed the order under Section 8

(4) of the Act on 15th October 1990 declaring the holding of the petitioner to be in excess of the ceiling limit by 5753.35 square metres. Its copy is at Annexure-G to this petition. It was again carried in appeal before respondent No.3. The matter was again remanded to respondent No.1 by the appellate order passed on 29th February 1992. Its copy is at Annexure-H to this petition. After remand, respondent No.1 passed the necessary order on 31st July 1993 declaring the holding of the petition to be surplus by 37019 square metres. Its copy is at Annexure-I to this petition. It appears to have come to the notice of the concerned officer of the State Government. He appears to have found it not worthy of any interference under Section 34 of the Act. However, it was held that an additional area to the tune of 11071.75 square metres was required to be declared surplus in the case. That order was passed on 7th February 1995. Its copy is at Annexure-N to this petition. Pursuant thereto, respondent No.1 issued one notification on 28th November 1995 under Section 10 (1) of the Act declaring the holding of the petitioner to be surplus by 48090.75 square metres. Its copy is at Annexure-O to this petition. In the meantime, the petitioner carried the matter in appeal before respondent No.3 under Section 33 of the Act. It came to be registered as Appeal No.Ahmedabad-49 of 1996. By the order passed on 29th June 1996 in the aforesaid appeal, respondent No.3 dismissed it. Its copy is at Annexure- M to this petition. The aggrieved petitioner has thereupon approached this court by means of this petition under Articles 226 and 227 of the Constitution of India for questioning the correctness of the order at Annexure-I to this petition as modified by the order at Annexure-N to this petition as affirmed in appeal by the appellate order at Annexure-M to this petition.

It transpires from the order at Annexure-I to this petition that the entire case is reopened, a part of which became final by the order at Annexure-C to this petition. It cannot be gainsaid that the proceeding which became final by the order at Annexure-C to this petition could not have been reopened in its entirety. The case could have been reopened only qua the four lands in respect of which exemption was cancelled by the order passed by and on behalf of respondent No.2 on 29th July 1987 at Annexure-D to this petition. Respondent No.1 appears to have acted contrary to law in that regard.

3. So far as the order at Annexure-N to this petition, after observing that the order at Annexure-I to this petition calls for no interference, there was no

necessity for suggesting declaration of any further area as surplus in the hands of the petitioner. Again, the order at Annexure-N to this petition appears to have been passed in exercise of the review or revisional jurisdiction under Section 34 of the Act. It cannot be gainsaid that such revisional/review powers could not be exercised without giving an opportunity of hearing to the concerned landholder. No opportunity of hearing appears to have been given to the petitioner before passing the order at Annexure-N to this petition. It cannot therefore be sustained in law even for a moment.

4. The petitioner's appeal is dismissed by the appellate order at Annexure-M to this petition mainly on the ground that the order at Annexure-I to this petition has been taken in review by the order at Annexure-N to this petition. As pointed out hereinabove, the order at Annexure-N to this petition cannot be sustained in law. In that view of the matter, the appellate order at Annexure-M to this petition also will not survive as its base is removed.

5. After coming to the conclusion that the appellate order at Annexure-M to this petition cannot survive, I might have chosen to remand the matter to the appellate authority, that is, respondent No.3 herein. However, since it is found that respondent No.1 has also acted contrary to law by passing the impugned order at Annexure-I to this petition, no useful purpose will be served by remanding the matter to respondent No.3. Instead, the matter deserves to be remanded to respondent No.1 for restoration of the proceeding to file and for his fresh decision according to law with respect to only four parcels of land in respect of which exemption is withdrawn by respondent No.2 by its order of 29th July 1987 at Annexure-D to this petition. It will be open to the petitioner to take up all relevant contentions as are taken in this petition in support of his case.

6. In the result, this petition is accepted. The order passed by the Competent Authority at Ahmedabad (respondent No.1 herein) on 31st July 1993 at Annexure-I to this petition as modified by the order passed by and on behalf of the State Government on 7th May 1995 at Annexure-N to this petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad on 29th June 1996 in Appeal No.Ahmedabad-49 of 1996 at Annexure-M to this petition is quashed and set aside. The matter is remanded to respondent No.1 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine.

Since the matter is old, it will be desirable on the part of respondent No.1 to dispose of the matter as expeditiously as possible preferably by 31st March 1997. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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